

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA  
\*\*\*\*\*

In the matter of the Appeal of  
TERRY MACKIE,

and

THE DEPARTMENT OF SOCIAL AND  
REHABILITATION SERVICES.

}  
}  
}

DECISION AND ORDER

\*\*\*\*\*

This is an appeal from a decision of a Hearing Officer for the Blaine County Superintendent of Schools, rendered January 27, 1981, which affirmed the decision of School District #10, of Blaine County, that it was not responsible for the tuition of R.H., a handicapped child, with visual perception problems, who is a slow learner. The decision also provided that the Department of Public Welfare of Blaine County was responsible for the tuition of the child, who is attending school at the Intermountain Deaconess Home in Helena. Both the Blaine County Department of Public Welfare and the Department of Social and Rehabilitation Services have appealed that decision.

This appeal was noticed for submission to the Superintendent and the time for submission of briefs, arguments and requesting oral argument has expired.

I believe two issues are presented on the appeal:

1. Whether the Hearing Officer properly determined that School District #10, of Blaine County was not responsible for the tuition of R.H.
2. Whether the Hearing Officer properly determined that the Department of Public Welfare of Blaine County was responsible for the tuition of R.H. at the Helena School.



In the material submitted by the parties to me for consideration, much has been written about the statutory grounds for and against the decision; but a brief discussion of the facts, I believe, is also important to this decision.

R.H. is a fourteen (14) year old boy, who was declared a dependent and neglected child by the District Court of the Twelfth Judicial District of Blaine County, on August 5, 1975. The transcript reveals that he had several placements between 1975 and 1979 and that between January 12, 1979 and January 21, 1979, he was temporarily placed with his mother and then removed. Next he was placed in a foster home on the Fort Belknap Reservation, but removed because of some aggression toward the children in the foster home. He then was placed in the Denny Driscoll Home in Butte, Montana, on August 10, 1979, and remained there for only three weeks because of legal problems which arose involving that institution. On August 31, 1979, he was placed at the Intermountain Deaconess Home in Helena, where he currently resides. It is clear from the record that no Blaine County Child Study Team gave any approval or was even given the opportunity to approve or recommend any of the transfers-placements of this child.

There is a dispute in the evidence as to whether or not the child is emotionally disturbed. Several reports of psychologists which were admitted as evidence below, indicate a learning disability and or mild retardation with some behavioral problems. The Blaine County Department of Public Welfare and Department of S.R.S. strongly maintain that the child has serious behavioral problems as does a report from the Intermountain Deaconess Home

A tuition request to pay for R.H.'s attendance in the Helena School District was denied by the Board of Trustees of School

District #10, of Blaine County, in accordance with the recommendation of a Child Study Team in that County. There were some exhibits of Lewis and Clark County Child Study Team recommendations also filed at the County Superintendent's Hearing.

LAW

With regard to the first issues, as to whether or not there is any financial obligation on Blaine County for the tuition of R.H., in the Helena School System, the Appellants in their Brief, do not challenge the ruling of the Hearing Officer with regard to the County's financial responsibility. It seems therefore that there is really no appeal with regard to the first issue and it is therefore affirmed. In later submissions to the State Superintendent, the Appellants do cast some doubt on the statutory authority for this ruling and therefore I do take this opportunity to set forth the applicable law in this area.

Montana's Statutes and Regulations on Special Education of Handicapped Children are mandated by Federal Law. Education of the Handicapped Act, 20 U.S.C. § 1401 through 1461.

That Act specifically identifies and defines the "State Educational Agency" and the "Local Education Agency" and then proceeds to establish and mandate certain responsibilities for educating the Handicapped to these agencies. 20 U.S.C. 1401 (7), (8). In addition the term "free appropriate public education" and the term "individualized education program" are also specifically defined in that Section of the Federal Statute. 20 U.S.C. 1401 (18), (19).

In 20 U.S.C. 1412, the eligibility requirements for a State are established and in particular, it is required that:

(4) Each local educational agency in the State will maintain records of the individualized educa-

tion program for each handicapped child, and such program shall be established, reviewed, and revised as provided in 20 U.S.C. 1414 (a) (5) of this title.

20 U.S.C. 1414 (a), requires that local educational agencies:

(5) provide assurance that the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate, revise, its provisions periodically, but not less than annually;

Further, 20 U.S.C. 1412 (5), (6), clearly require that the State Educational Agency establish procedures to insure and control the quality of educational services provided to handicapped children. Specifically the State Educational Agency is responsible for all programs administered by any other State or Local Agency involving the education of the Handicapped Children.

In this framework, the requirements of §20-7-421 M.C.A., requiring approval of the Superintendent of Public Instruction and the Board of Trustees for the attendance of a child in need of Special Education in another District and the provisions of 510.16.1310 (1) are consistent with the Federal and State Statutes in the area. It is difficult to imagine another method of controlling out of District placements other than through the provision of § 10.16.1310 A.R.M. -

Therefore, because no initial recommendation was made by the resident District Child Study Team for R.H., nor at any later time recommended by the resident District Child Study Team, the placement outside of the District relieved the Blaine County Public School System of all financial obligations.

The second issue presented by the Appeal, has consumed much of the discussions of the parties. I find no statutory basis for the State Superintendent or the local education agencies to deter-

mine the residency of a child for the purposes of assessing the cost imposed. Obviously the whole complex issue could have been avoided had the necessary cooperation existed between the various State and Local agencies at the outset.

Since there is no basis for the assessment of tuition costs to the Blaine County Department of Public Welfare, Hearing Officer's ruling with regard to the assessment of the tuition cost to that entity must be and is hereby reversed.

Hopefully, it will be painfully apparent to all concerned, that the better method in these cases is constant communication and cooperation, rather than appeal and litigation.

Therefore, the decision of the Hearing Officer for Blaine County is affirmed in part and reversed in part.

DATED JULY 14, 1981.